

## **Remarks/Arguments**

### **A. Status of the Specification**

The specification has been amended to update the priority information that was originally provided in the Request for Filing Divisional Application Under 37 C.F.R. § 1.53(b) Document filed on August 28, 2001. For instance, the priority information now provides the current status of the parent non-provisional application (*i.e.*, parent Application Serial No. 09/441,410 filed May 7, 1999, has issued into U.S. Patent No. 6,689,600). Applicant request that the objection to the specification be withdrawn.

### **B. Status of the Claims**

Claim 34 has been amended, and support can be found throughout the specification and claims as originally filed. Claims 34-42, 60-61, and 63-92 are pending, with claims 60 and 73-92 currently withdrawn from consideration at this time. Applicant is inclined to cancel the withdrawn claims and file a divisional application upon allowance of the examined claims.

### **C. The Anticipation Rejection Is Overcome**

Claims 34-37, 41-42, 61, and 63-72 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Publication No. 2002/0094577 (Guirguis). The following is the stated basis for this rejection:

Guirguis et al. disclose a composition comprising a polyol and a non-ionic detergent (see abstract). Guirguis et al. further disclose that the polyol can be polyethylene glycol or glycerol (see paragraph [0012]) and the non-ionic detergent can be Tween 80 (see paragraph [0018]). They further disclosed the composition can further comprise a buffer (*i.e.* TRIS) and/or sodium chloride [see paragraph 0019]. Since the promotion of the maintenance of adenoviral activity is deemed an intended use and hence does not constitute a claim limitation, the cited art anticipates all the limitation of the rejected claims.

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Applicant respectfully disagrees with the rejection. Claims 34-37, 41-42, 61, and 63-72 are not anticipated by Guirguis, as this reference fails to disclose every element of Applicant's claimed invention. MPEP § 2131 ("A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.") (quotations omitted). For instance, this reference does not appear to disclose "[a]n aqueous pharmaceutical composition comprising adenoviral particles and a polyol in an amount effective to promote the maintenance of adenoviral infectivity" as claimed by Applicant.

Guirguis appears to concern a fixative composition that can be used to prepare cytological or histological specimens for subsequent examination. Guirguis at Abstract. The fixative composition contains an aldehyde crosslinker, a polyol and a detergent. *Id.* This is explained in further detail in the Summary of the Invention section of this reference:

#### SUMMARY OF THE INVENTION

**[0017]** The present invention relates to a fixative composition and method for preserving a cytological or histological specimen. The compositions and methods of the present invention are particularly suitable for separating matter from biological, physiological, and environmental fluids and presenting the particulate matter in an improved manner for examination.

**[0018]** The present invention is directed to a cytological and histological fixative containing an aldehyde crosslinker, a polyol and a detergent. The aldehyde of the composition is typically a C<sub>1</sub>-C<sub>6</sub> alkanal or a C<sub>1</sub>-C<sub>8</sub> alkylene dialdehyde, such as glutaraldehyde, formaldehyde, paraformaldehyde, acetaldehyde, propionaldehyde, or butyraldehyde. The polyol of the composition typically may be ethylene glycol, propylene glycol, glycerol, sorbitol, and mannitol. The preferred detergent is a non-ionic detergent, such as Triton X-100, Nonidet P40, Igepal Ca-630, Tween® 85, Tween®80, or Tween®65.

*Id.* at ¶¶[0017]-[0018]. In preferred aspects, the fixative composition "is particularly useful for preparing testing samples from urine and its associated cells for Pap smears." *Id.* at ¶[0053].

Guirguis does not appear to disclose or suggest pharmaceutical compositions—much less a pharmaceutical composition that includes adenoviral particles as claimed by Applicant. In fact, this reference appears to be silent on adenoviral particles. Further, there does not appear to be any suggestion in this reference that adenoviral particles could be added to the fixative compositions. Again, the collaborators in Guirguis explain that its fixative composition “is particularly useful for preparing testing samples from urine and its associated cells for Pap smears.” *Id.* at ¶[0053].

Applicant respectfully submits that Guirguis fails to disclose every element of the claimed invention. For at least this reason, Applicant requests that the rejection of claims 34-37, 41-42, 61, and 63-72 under 35 U.S.C. § 102(e) as being anticipated by Guirguis be withdrawn. *See* MPEP §2131.

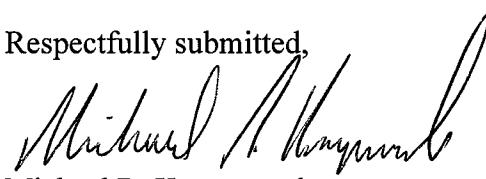
#### **D. Conclusion**

Applicant believes that this is a full and complete response to the Office Action mailed on November 2, 2006. The pending claims are in a condition for allowance, and such favorable action is requested.

It is believed that no fee is due for filing this document. However, should any fees under 37 C.F.R. §§ 1.16 to 1.21 be required for any reason relating to this document, consider this paragraph such a request and authorization to withdraw the appropriate fee from Fulbright & Jaworski Deposit Account No. 50-1212/INRP:067USD1.

The Examiner is invited to contact the undersigned Attorney at (512) 536-3020 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,



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